

Decision 03-05-070 May 22, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Tulare County Water Company, Inc. doing business as Central Valley Water Company to sell and the City of Dinuba to Buy the Water System located at Tract 406 In or Near the City of Dinuba Tulare County.

Application 03-01-010
(Filed January 14, 2003)

OPINION APPROVING SALE OF WATER SYSTEM

Summary

We approve the joint request of Tulare County Water Company, Inc. (Tulare) and the City of Dinuba (Dinuba) for the sale to Dinuba of Tulare's adjacent Central Valley Water Company (Central Valley). Dinuba will acquire a working well and other associated facilities "as is" for a nominal sum, will interconnect them with its municipal system in the future and will assume the responsibility to provide water service to the 91 customers that Central Valley serves at present.

Background

Both Tulare and its dba, Central Valley, are Commission-regulated, Class D water utilities. Class D water utilities are those with fewer than 500 connections. Tulare owns and operates Tract 345, located near the City of Visalia (Visalia). By D.95-02-072, the Commission authorized Tulare to sell to Visalia several other small water systems, known as Tract 366, Tract 381, and Tract 344/380. Central Valley owns Tract 406, a small water system near Dinuba, which is a charter city located in Tulare County. Dinuba's public works

department operates municipal water supply, sewage disposal, and solid waste disposal systems. Recently, Dinuba has annexed the land served by Tulare. Dinuba plans to extend its municipal utility systems to serve the people who reside there.

By this joint application under Pub. Util. Code §§ 851 through 854,¹ Tulare and Dinuba seek Commission authority for Tulare to sell Central Valley's Tract 406 to Dinuba. The application, filed on January 14, 2003, appeared in the Commission's Daily Calendar on January 16. No protests were filed.

Tulare filed two supplements to the application, on March 17 and March 18, which contain additional information about the application and support for it. Thereafter, Dinuba provided Commission staff with its Initial Study and Notice of Compliance with 1997 General Plan Program EIR (Notice of Compliance). An Administrative Law Judge (ALJ) ruling on May 2, 2003, identifies the Notice of Compliance as Reference Exhibit A for this proceeding.

Discussion

Section 851 requires Commission authorization before a public utility such as Tulare may "sell . . . [assets] necessary or useful in the performance of its duties to the public. . ." The purpose behind this and related sections is to enable the Commission, "before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of transfer, as the public interest may require." (*San Jose Water Co.* (1916) 10 CRC 56, 63; *Hinkley Valley Water Co.* (1993) 50 CPUC2d 327, 328.)

¹ All statutory citations refer to the Public Utilities Code unless otherwise stated.

The system at issue, Tract 406, consists primarily of one lot (parcel #014-271-019-000), two wells (one of them abandoned), one 30-horsepower pump and two pump flow meters, one 5,000-gallon storage tank, approximately 5,000-feet of water mains, one fire hydrant and one service meter, and 91 customer services (90 of them unmetered). There are no buildings. The original cost of these components is \$25,380 and the depreciation reserve is \$14,799, resulting in a net book cost of \$10,581.² The parties warrant that condition of the system is good; however, they state that:

Since 1993, the seller's well has been used as a backup well since the seller's system has been supplied by another well installed and owned by defendants of a water contamination lawsuit. The State Department of Health Services has issued a compliance order to seller which includes a finding that the defendant's replacement well does not provide a reliable long term supply of potable water. The most practical cost effective solution to this problem is to connect the seller's water system to the City of Dinuba's water system. A federal court appointed arbitrator has ordered that this be done as soon as possible. (Application at pp.3-4.)

Accordingly, under the proposed Purchase and Transfer Agreement between the parties, Exhibit A to the Application, Dinuba will buy the system "as is" from Tulare for \$1.00 and will assume all responsibility for providing water to the existing 91 customer services. Tulare's March 17 supplemental filing includes a copy of the arbitrator's order, as well as proof of notification of the affected customers.

² Dinuba will not buy certain intangible Plant, Other Equipment, and Office Furniture that have an original cost basis of \$3,271, a depreciation reserve as of December 31, 2001 of \$267, and a resulting book value of \$3,004. This largely undepreciated property does not constitute "used and useful" utility assets within the context of § 851.

The Application states that Tulare “desires to dispose of the system because operating a water company is becoming a very complex business that is better served by a large corporation or municipality rather than by a small company” and that “[i]t is seller’s desire to get out of the water supply business completely.” While the current water system is a small, isolated system with water supplied by a single well, the Application states that Dinuba’s plan, to upgrade the system and integrate it with the municipal system, will result in better service to existing customers. Tulare’s March 28 supplemental filing consists of a copy of the Dinuba City Council Resolution (Resolution 2002-77), which authorizes the incorporation of Tulare’s water system into the municipal system. Tulare’s March 17 supplemental filing includes a rate impact assessment that projects a limited change in the rate structure. Once they become customers of Dinuba, Tulare’s customers will see a reduction in the service charge from \$15.50 to \$14.37 and an increase in the quantity rate per 100 cubic feet of water from \$0.52 to \$0.62. However, while Dinuba’s service charge includes a base amount of 1,200 cubic feet of water, the service charge for Tulare does not.

The parties have appended Exhibits B through D to the Application as additional support for the sale. Exhibit B is a copy of the Grant Deed that Tulare will execute in order to convey title following Commission approval of the proposed transfer. Dinuba, by its City Manager, has already executed the portion that constitutes acceptance of the intended conveyance. Exhibit C is Central Valley’s 2001 Annual Report, which shows gross operating revenues of \$18,176 in connection with the 91 customer services, gross expenses of \$16,294, and resulting net revenue of \$1,882. Exhibit D is the Independent Auditors’ Report of Dinuba’s general purpose financial statements for the fiscal year ending June 30, 2001, which shows approximately \$5.5 million in unreserved

retained earnings in the city's "Enterprise Proprietary Fund," the fund associated with Dinuba's municipal utility operations. Tulare's March 17 supplemental filing contains additional detail to substantiate the solvency of this municipal utility operation.

Both parties warrant that, at present, there are no customer deposits to establish credit and no main extension advances. Dinuba agrees to pay any refunds due on any main extensions advances made in future.

On the basis of the Application as a whole, we find the proposed transfer is in the public interest and should be approved. Dinuba has the resources needed to ensure continued service of potable water to Central Valley's customers. Absent the sale, it is not clear how long Central Valley could continue to serve its customers, given the existing supply problems. Considering these problematic circumstances against the modest book value of the system, we find that the terms of sale are reasonable.

CEQA

The California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*, hereafter CEQA) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereinafter, CEQA guidelines, Section 15002.) The Commission's staff has determined that the water system sale proposed by joint applicants constitutes "a project" under CEQA.

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision (*i.e.*, approve this § 851 application) for the project to proceed, this Commission must act as either a Lead or a Responsible Agency

under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA guidelines Section 15051 (b)).

Dinuba is the Lead Agency for the project; the Commission's role in environmental review is that of a Responsible Agency. Thus, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project (CEQA guidelines 15050(b)). The specific activities which must be conducted by a Responsible Agency are contained in CEQA guidelines Section 15096.

In September 2001, Dinuba prepared an Initial Study and Notice of Compliance with its 1997 General Plan Program Environmental Impact Report regarding a proposal to expand the City of Dinuba Sphere of Influence to allow annexation to the City in the northwest portion of the community. Commission staff has reviewed these documents and we find them adequate for our decision-making purposes. The "project" within the scope of this application was reviewed in the context of the City's Initial Study and Notice of Compliance. The City determined that the project would have no significant impact on the environment. We believe the City reasonably reached that determination and we adopt that finding for purposes of our approval.

Miscellaneous Procedural Matters

In Resolution ALJ 176-3105, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. We confirm those determinations. As no hearing is required, pursuant to Rule 6.6 of the Commission's Rules of Practice and Procedure, Article 2.5 of the Rules ceases to apply to this proceeding.

Comments on Draft Decision

This is an uncontested matter concerning a water corporation. Accordingly, under § 311(g)(3), the usual 30-day period for public review and comment does not apply.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. No protests have been received.
2. The Tract 406 real property and facilities described herein, which Dinuba proposes to acquire, have an original cost of \$25,380, a depreciation reserve of \$14,799, and a resulting net book cost of \$10,581.
3. The following property is not “used and useful” within the context of § 851: the intangible Plant, Other Equipment, and Office Furniture that have an original cost basis of \$3,271, a depreciation reserve as of December 31, 2001 of \$267, and a resulting book value of \$3,004.
4. Considering the long-term supply problems that Central Valley faces and the modest book value of the system, the sale to Dinuba of the Tract 406 system “as is” for \$1.00 is reasonable.
5. Dinuba, which operates municipal sewer, solid waste and water facilities at present, has proven expertise in water utility management and operations.
6. Dinuba’s substantial financial resources will enable it to provide continued service of potable water to the current Central Valley customers.
7. Current ratepayers in Central Valley’s Tract 406 are assured of continued water service by Dinuba.
8. The rate impact on customers will be negligible.
9. The sale of Central Valley’s Tract 406 is a project subject to environmental review pursuant to CEQA.
10. Dinuba is Lead Agency under CEQA.

11. Staff has reviewed the Initial Study and Notice of Compliance prepared for the project by Dinuba and we find these documents are adequate for our decision-making purposes.

Conclusions of Law

1. No hearing is necessary.
2. The Initial Study and Notice of Compliance with respect to the project at issue in this application is adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.
3. We believe that Dinuba reasonably determined that the project will have no significant impact on the environment and we adopt that finding for purposes of our approval.
4. The application should be approved and following consummation of the sale and payment to the Commission of reimbursement fees due pursuant to § 401 *et seq.*, Tulare should be relieved of its public utility responsibilities in Central Valley's Tract 406 service territory.
5. This order should be made effective immediately in order that the parties may consummate the sale promptly and Tulare be relieved of its public utility obligations.
6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Application (A.) 03-01-010, filed by Tulare County Water Company, Inc. (Tulare), doing business as Central Valley Water Company (Central Valley), and by the City of Dinuba (Dinuba), is approved.

2. The City of Dinuba's finding in its Initial Study and Notice of Compliance, that the project will not have a significant effect on the environment.

3. Within ten (10) days of the effective sale of Central Valley's Tract 406 to Dinuba, Tulare shall notify the Director of the Commission's Water Division, in writing, of the date on which the sale was consummated. A true copy of the instrument affecting the sale shall be attached to the written notification.

4. Tulare shall remit to this Commission the Public Utilities Commission (PUC) Reimbursement Fees collected to the date of the sale of Tract 406.

5. Upon completion of the sale authorized by today's order, and payment of the PUC Reimbursement Fees, Tulare shall stand relieved of its public utility water service obligations in Central Valley's Tract 406 service territory, as described more fully in the Application.

6. This authorization shall expire if the sale is not consummated within one year of the date this order is mailed.

7. A.03-01-010 is closed.

This order is effective today.

Dated May 22, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners